IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

SECOND APPEAL NO. 1197 OF 2004

Radhakisan M. Chavan
(deceased) through L.R.s
1-A. Smt. Saibai Radhakisan Chavan
& ors. ... Appellants

V/s

1. Govind Laxman Rajendra & ors. ... Respondents

Shri S.M. Mhamane for the appellant.

Shri S.M. Gorwadkar for the respondents.

CORAM: P.V. KAKADE, J.

DATED: 29TH NOV., 2004.

P.C.:

1. The appellants have preferred this appeal against the judgment and order passed by the Ad-hoc Addl. District Judge, Nasik dated 23.6.2004 allowing the appeal of the present respondents whereby the decree dated 11.1.2000 was passed by the Civil Judge, Jr.Divn., Nasik Road to the effect that the decree passed in R.C.S. No. 219 of 1957 against the defendant No.8 was not binding on the plaintiffs and defendants 1 to 7 and/or anybody acting on their behalf were restrained from taking possession of the suit premises.

2. I have heard the learned counsel for both parties. Perused the record.

The present appellants filed the suit in the lower Court against the respondents for declaration that the decree passed in R.C.S. No. 219 of 1957 is binding upon the plaintiffs and also for temporary injunction restraining them to execute the decree in R.C.S. 249 of 1974. The learned Trial Judge decreed the suit holding that the decree passed in R.C.S. No. 219 of 1957 was not binding upon the plaintiff.

The appeal was carried to the District Court. The learned lower appellate Court Judge heard the appeal on merits and allowed the appeal and set aside the decree passed by the lower Court.

3. The only question involved in this appeal is to the effect that whether separate suit is permissible while the subject matter of provision of Sec.47 of the C.P.C. stipulates to the effect that, all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree shall be determined by the Court executing the decree and not

by a separate suit. In the present case before us, the appellants choose to file separate suit making various allegations to the effect that the decree passed in the earlier suit was not binding upon them. However, the learned lower appellate Court Judge took the view that no separate suit was maintainable and it was necessary for the appellants to get the issue adjudicated in the execution proceeding which was filed. While considering the relevant issues, the learned lower appellate Court Judge has put reliance on the ratio in the case of **Ghasi Ram v/s Chait Ram Saini & ors., reported in A.I.R. 1998 SC 2476,** wherein the Apex Court has discussed the scheme under Order 21 Rule 97 in details and has in fact considered all the relevant aspects while considering the relevant issue which is aptly applicable to the present case.

4. Under the circumstances, I do not see any reason why the lower appellate Court's order should be interfered especially when there is no substantial question of law involved in this appeal.

In the result, the appeal stands dismissed in limine with no order as to costs. Consequently, the civil application also stands dismissed with no order as to

costs.

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